STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
AMENDMENT # 2
RFP # 317.03-121

June 21, 2005

The subject RFP is hereby amended as follows.

A. The following RFP Schedule of Events updates or confirms scheduled RFP dates.

	EVENT	TIME	DATE	UPDATED/ CONFIRMED
1.	State Issues RFP		05/16/05	CONFIRMED
2.	Disability Accommodation Request Deadline		05/23/05	CONFIRMED
3.	Pre-proposal Conference	9:00 a.m. CST	05/25/05	CONFIRMED
4.	Notice of Intent to Propose Deadline		05/27/05	CONFIRMED
5.	Written Comments Deadline		06/08/05	CONFIRMED
6.	State Responds to Written Comments		06/21/05	CONFIRMED
7.	Proposal Deadline	2:00 p.m.	06/30/05	CONFIRMED
8.	State Completes Technical Proposal Evaluations		07/08/05	CONFIRMED
9.	State Opens Cost Proposals & Calculates Scores	9:00 a.m.	07/11/05	CONFIRMED
10.	State Issues Evaluation Notice & Opens RFP Files for Public Inspection	9:00 a.m.	07/12/05	CONFIRMED
11.	Contract Signing		07/22/05	CONFIRMED
12.	Contract Signature Deadline		07/29/05	CONFIRMED
13.	Performance Bond Deadline		08/01/05	CONFIRMED
14.	Contract Start Date		08/15/05	CONFIRMED

B. The following State responses to the questions detailed shall amend or clarify this RFP accordingly. (Note: in the questions that follow, any vendor's restatement of the text of the Request for Proposals [RFP] is for reference purposes only and shall not be construed to change the original RFP wording.)

	QUESTION/COMMENT	STATE RESPONSE
1.	In regards to the portal RFP, the only inquisition we have is in regards to the bidders list and if/when it will be made available for review. We are a newer company, and while we have a lot of talent in the portal development area, we aren't set	A list of vendors to whom the State attempted to send the RFP notice will be available when the files are opened for public inspection. The current date for opening the RFP files for public inspection is given in RFP Section 2, RFP Schedule of Events.

	up to meet a few of the requirements alone. We would like to extend a partnership to another bidding company. Let me know where the State stands on this.	
2.	Per Attachment C, Liquidated Damages and Service Level Agreements, Section A includes a provision that refers to n% and a "n" consecutive months. [Vendor Name Deleted] seeks clarification on what is intended by these provisions and how they will be applied.	RFP Amendment #1 was an attempt to clarify this. In that amendment, the ""n" consecutive month" and the ""n" times" refers to the third, fourth, etc. consecutive months.
3.	Regarding the cost proposal, should a signed copy of ATTACHMENT 6.2 the PROPOSAL TRANSMITTAL AND STATEMENT OF CERTIFICATIONS AND ASSURANCES be included with the cost proposal (in addition to including it with the Technical Proposal), or should the cost proposal consist only of the completed and signed ATTACHMENT 6.4: COST PROPOSAL & SCORING GUIDE and evidence of authority to bind the proposing entity (if necessary)?	It is not necessary to include a copy of the *PROPOSAL TRANSMITTAL AND STATEMENT OF CERTIFICATIONS AND ASSURANCES* within the Cost Proposal.
4.	Does the requirement in RFP Section 3.2.3 that all proposal pages must be numbered refer to the proposing entity's proposal response narrative only and not to other required documents such as the completed RFP attachments, written bank reference letter, positive credit references, certificate of insurance, etc.?	The Proposer must number all pages within the proposal.
5.	Regarding the Technical proposal, will the state confirm that the following ordering of documents is correct and compliant, and if not, please advise on the state's preferred ordering of documents: a. Cover letter b. Completed and signed Attachment 6.2: PROPOSAL TRANSMITTAL AND STATEMENT OF CERTIFICATIONS AND ASSURANCES c. Evidence of authority to bind the proposing entity (if necessary) d. Completed and signed Attachment 6.3 TECHNICAL PROPOSAL & EVALUATION GUIDE - SECTIONS A-C e. Required documentation (written bank reference, Credit rating report, insurance certificate, letter of commitment for line of credit, etc.) f. Technical Proposal (response narrative)	The described order of documents appears to be consistent with RFP requirements detailed in the RFP.
6.	**<u>A.8 Source Code Escrow.</u>** We are prepared to meet the requirements of A.8 and to maintain a source code escrow as required in the pro-forma contract. We would suggest the following clarifications:	[a] The State agrees to amend pro forma contract Section A.8 for clarification. See Item C, following these questions. [b] The language of pro forma contract Section A.8.c remains as written. [c] The State does not intend to conduct further

	[a] **A.8 and A.8.b** These sections require all "Portal source code" to be placed into escrow. Clarification that this means the Work Product source code, and the Contractor's Proprietary Products source code is suggested. Otherwise, there appears to be the suggestion that third party off the shelf software is included in this provision. Trying to obtain source code for third party products manufactured by Oracle, Microsoft Corporation, etc. could slow or jeopardize the implementation of various initiatives in which such third party products are required. [b] **A.8(c)** This section provides the source code is released "if for any reason" the Contractor is unable to fulfill its obligations. The purpose of the source code escrow is to permit the State to secure the source code so it can support the portal if the Contractor fails to provide the support. If the Contractor's failure is the result of a force majeure event, or as a result of problems or breaches by the State in its obligations, then there should be no release of the source code. [c] [Vendor Name Deleted] can comply with the stated source code escrow requirement as we understand it; we simply would like to discuss with the State clarifications on these points in Section A.8.	discussions on the contract language; and, with the exception of specific amendments agreed to by the State, the State expects to execute the pro forma contract as written.
7.	**C.1 Maximum Liability.** It is unclear in the provisions of Section C whether the Maximum Liability includes just the fees payable for non-transaction fee work, or whether the fees paid per transaction are also included. If the per transaction fees are intended to be counted towards the Maximum Liability, the contract works against the State's interests and its stated goals of improving adoption of portal usage. Under this provision, the more successful the Contractor's efforts in increasing adoption and generating more transaction fees, the more likely it is that the Contractor will exceed the Maximum Liability, and not receive payments for such efforts. It would appear to be in the State's interests, therefore, to clarify that the Maximum Liability refers to appropriated funds for non-transaction based services; and that the gross transaction fees are not counted towards the Maximum Liability. Alternatively, the State should consider providing clarification that the amounts rebated to the state under Section C.3.g are not included in the calculation of the Maximum Liability.	With regard to Compensation to the Contractor, the provisions of C.1 pertain to all portal services for which the contractor invoices the State. This includes: (1) Transaction Fees owed to the Contractor, but not collected directly from the user of the Portal Service; (2) Subscriber Fees; (3) Application Hosting Fees; and (4) Consulting Classification Skill Fees. An example of an item that would not be included in Contract Section C.1 would be "Batch & Interactive Moving Vehicle Online Requests" (MVORs) The portal vendor will collect the total fee directly from the user of the service. The portal vendor then remits to the State the agreed upon State portion of the fee, and retains the "Per Transaction Fee," as stated in Contract Section C.3.a, for itself. The vendor provides documentation to the State of the total transactions, but there is no invoice, and the State does not compensate the vendor directly. Therefore estimated amounts for these transactions will not be included in Contract Section C.1. Moreover, the rebates associated with MVORs are also not included in the Maximum Liability. The State will insure that upon initiation of the contract the Maximum Liability of Section C.1 is sufficient to cover a significant amount of portal adoption beyond the current level. If this amount proves to be insufficient during the term of the contract, the State may, at its option, execute an amendment to increase further the Maximum Liability.

8.	**C.3.g. Rebate for New Portal Development.** [Vendor Name Deleted] and its subsidiaries have extensive experience working with our partners to establish revenue sharing provisions similar to the rebate for new portal development as described in section C.3.g. In nine of our 17 portal states, [Vendor Name Deleted] subsidiaries participate in some form of revenue sharing. Some states and/or governing boards have elected to use the revenue share to cover expenses related to the relevant governing board and to fund the board's technology initiatives. Only one state partner, however, approaches the level which the State of Tennessee approaches, and that state has legislative authority, which is lacking in Tennessee. [Vendor Name Deleted] looks forward to working with the state to establish a revenue sharing model that meets the state's needs, policies and portal initiatives. As noted above, [Vendor Name Deleted] is willing to agree to the proposed rebate, however, it questions whether the rebate is in the best interest of the portal. If selected for contract award, there are several issues that the state may wish to consider prior to initiation of the rebate: • [a] Will there be an impact on overall portal services because of the decrease in overall portal revenue? Since it is unclear how the portal rebate will be used by the state, since the portal's priorities are set by the state and carried out by [Vendor Name Deleted], and because there will be an overall decrease in portal revenue available to the provider to provide portal services, the state could very likely experience a resulting decrease in the level of service. We are not currently sharing financial records with the State of Tennessee, however, we have offered to do so, as we do in other states. This RFP does not address the sharing of financial records with the State in the future. Revenue sources accepted by other states have been foreclosed to the portal by the State's policies in Tennessee. The RFP sets forth new requirements that may likely result in an increase in portal expenses. [Vendor Name Deleted] looks forward to working with the state to ensure that there is sufficient portal revenue after the suggested rebate to meet the new initiatives of the state. • [b] How will the legislature view the rebate, as a tax or a fee? The line between a fee and a tax is that a fee is collected for a specific service associated with that fee ([Vendor Name Deleted], as a third party, collects a fee	[a] It is the State's intent that the rebate will be used for portal services. Our goal is to have revenues to pay for portal services that may not have other funding streams, but are aligned with the State's goal of increasing online services to citizens. If there is an impact to overall portal services, as suggested by the question, it should be positive. [b] We cannot speak for the legislature, but as stated in the RFP this is clearly not a tax in any way, shape or form. [c] The Portal Advisory Committee will authorize the allocation of the rebate monies to fund portal activities across all agencies of state government to satisfy online service priorities.

	to provide enterprise portal services—this is the legal basis for our services in every state, including Tennessee) and a tax is collected on a specific activity and the revenue is available to be spent elsewhere (e.g., income taxes fund highways, hospitals, etc). The legislature rightly views its role to be as the sole authority on raising tax revenue and allocating spending of the same. A diversion of this magnitude cannot be justified as a "contract administration fee" as the very small diversions are justified in other [Vendor Name Deleted] states (the exception, noted in the first bullet point, is Kansas, the first self-funded portal state and one with legislative authority). This raises a real risk that such a diversion, no matter how it is labeled, will be viewed as an impermissible tax. • [c] What agency will authorize the spending of the rebate money, and will other agencies seek similar rebates for their services online with the portal? It is unclear what agency will authorize the spending of the rebate money. The rebate could be a negative precedent for other participating agencies unless they are able to share in the initial rebate or if agencies see the portal as a method for generating additional money. The rebate may well set a bad precedent in the portal's dealing with other agencies. [Vendor Name Deleted] looks forward to discussing the potential affect of the suggested rebate. To reiterate, we can conduct portal operations with such a rebate in place, but our experience in other states suggests it may be an unwise idea and should be approached and discussed very cautiously. We can suggest options on how to structure some revenue share in a more constructive way that did not erect additional issues for the portal to work with other agencies. One option is to structure the portal so that agencies can work with the portal without having to pay time and materials rates in working with the portal. We look forward to discussing ways to address each issue in a way that meets the state's requirement for revenue to fund new portal applications. The State should also consider clarifying that the calculation of the rebate will be on the transaction fees ***actually received*** by the Contractor, and will include a deduction for transactions in which the transaction fee is required to be refunded by the Contractor or the State.	
9.	**D.3 Termination For Convenience.**	Section D.3 shall remain as written.

	The State has elected to use a self-funded model to build and improve its portal. As the state is aware, in such a model, the Contractor is required to fund upfront portal capital costs and improvements and receive payment over a period of time from the steam [sic] of transaction fees received. The termination for convenience clause permits the State to receive the benefits of the Contractor's efforts, but also allows the State opt out of the obligation to provide a stream of transaction fees to repay the Contractor's efforts by terminating for convenience at any time. While we are willing to sign a contract with such a provision and understand that the state requires the ability to terminate the contract, we would like the opportunity to discuss in more detail how this provision is counter to the goals of this contract model. Briefly, the State desires to have an up-to-date, fully implemented portal *as quickly as possible, with new services added as quickly as possible*. The Contractor should have incentives for expeditiously applying as many resources towards the portal *as quickly* as possible to meet and exceed the State's goals for the portal. Termination for convenience runs contrary to that goal because it puts at risk the Contractor's right to recoup its upfront and continuing capital expenditures, operating expenses, and much of the development costs from the stream of transaction fees. If termination for convenience is retained in the contract, there should be recognition of the special nature of a self-funded portal project and adjustments to preserve the state's goals of receiving products and services as expeditiously as possible while providing a fair amount of time for the contractor to earn a return on its considerable upfront investment.	
10.	**D.4 Termination For Cause and E-4 Breach**. Given the importance of this contract, and the difficulties in transitioning the services to another contractor, it would appear to be in the State's interest to include a provision that each party will provide the other with notice and a reasonable cure period in the event there is a problem with performance prior to declaring a default. Such a cure period does not eliminate the opportunity to recover damages for the default, but it does allow for communications between the parties and good faith efforts to work together to fix any problems and preserve the contract. Stability for the portal should be of utmost concern, and a notice and cure period will help secure such stability.	The State agrees to amend the pro forma contract as described in Item H following these questions. The State does not intend to conduct further discussions on the contract language; and, with the exception of specific amendments agreed to by the State, the State expects to execute the pro forma contract as written.

	We are agreeable in accepting such a provision in the pro-forma contract, but would like the opportunity to discuss other options, and how these provisions are addressed within our other state portals.	
11.	**D.14 Force Majeure.** It appears there may have been an omission or error in the wording of this provision. The provision states that the obligations of the parties are subject to "prevention" by causes beyond the parties' control. The standard force majeure clause provides that delay or inability to perform due to force majeure events is not a breach. This provision should be clarified to provide that force majeure events excuse the performance of the party suffering the event for the period for the force majeure event. In principle, [Vendor Name Deleted] agrees with the concept of force majeure, but seeks specific clarification regarding the specific language.	The State will not modify the standard contract language. However, for clarification purposes, the State's interpretation of this language is that if a party is unable to perform its obligations because of a force majeure event, it shall not be deemed in breach of contract during the time of such event.
12.	**E.4.2.a(2)** While the State has included liquidated damages for failure to meet service levels, there are reasons why such a provision is not appropriate in a self-funded portal model. We look forward to the opportunity to discuss these reasons in more detail. Briefly, the Contractor is paid out of transaction fees, and if the portal or an application is not functioning, transactions will not occur through the portal, and those transaction fees will be lost. Therefore, the contract already has sufficient monetary incentives for the Contractor to do all it can to come as close to 100% uptime as is commercially reasonable. Additionally, the loss of the stream of transaction fees means the Contractor will be penalized for downtime. For that reason, there is no need for liquidated damages to be placed on top of the loss of transaction revenue for portal availability and availability of applications. The imposition of the liquidated damages fees means more portal revenues will be diverted from portal improvements, enhancements and services. On a legal note, it is generally difficult to recover liquidated damages unless they are deemed reasonable and if actual damages are difficult to calculate. Having a provision that permits recovery of liquidated damages and also recovery of actual damages appears to permit double recovery and allow for surplus damages payments to the State. The pro-forma contract appears to	From the context it appears that the correct reference should be E.4.a.(2). By their very nature the expectation is that online (i.e. portal) services are always available. The State believes that it is reasonable to impose penalties for excessive outages of those services. The Contractor may suffer very limited loss of transaction revenue due to an extended, unplanned outage. However, the negative public perception regarding state services can be significant. The liquidated damages language will remain as written.

	permit this, as it provides that the State is entitled to liquidated damages *and* to damages under the indemnity provisions as well. This is another reason the State should consider removing the liquidated damages provisions from the pro-forma contract. We may be willing to accept this provision if it is not amended by the state.	
13.	**[**a] **E.4.2.a.(3) and E.5 Partial Takeover** The State reserves the right to declare a partial default in this section and in section E.5 reserves the right to exercise a "partial takeover" at its convenience and without cause. [b] As noted in our comments regarding termination for convenience, the State may consider that the concepts of partial default and partial takeover are counter to the goals of this contract unless the provisions recognize the continuing need for compensating the Contractor for the operations that it retains in connection with the portal. The Contractor needs assurances that the State will not exercise its rights under these sections in a manner that eliminates the fee-bearing transactions, but leaves Contractor with continuing obligations for which no revenues are available to compensate it. [c] Section E.4.b provides that the Contractor must notify the State within 30 days of any breach by the State or the breach is deemed to be waived. We suggest that the 30-day period should begin from the date the Contractor learns of the breach, rather than the date of the breach. [d] We would also like to explore with you the inclusion of a provision allowing the Contractor to terminate the contract (after an adequate transition period) if the financial basis on which the portal services are premised, is removed or substantially eroded. We may be willing to accept these provisions if they are not amended by the state.	[a] From the context it appears that the correct reference should be E.4.a.(3). [b] The State agrees to amend pro forma Contract Section E.4, as described in Item G, following these questions. [c] The State agrees to amend pro forma Contract Section E.4.b, as described in Item E, following these questions. [d] The State cannot agree to such a provision.
14.	**E.6.a. State Ownership of Work Products.** We are willing to accept the language relating to State ownership of work product, but would like to point out how the self-funded model we have put in place in 17 other states allows us to bring products developed in one state to the other states, and reciprocally, allows products developed in the other states to be provided to that state. This creates the ability of each state to tap into the expertise and improvements of 17 development	The State recognizes that in order to take advantage of improvements added to portal services in other states the vendor may recommend that the State agree to certain reciprocity clauses. The vendor should be aware that the State is only able to extend reciprocity within the bounds of the last sentence of pro forma contract Section E.6.a. The State will not sign any licensing agreements separate from the terms of the Contract between the State and the Contractor. Therefore, any reciprocity clauses acceptable

	labs, rather than be limited to its own development efforts. States must agree to this reciprocal sharing in order to receive the work from other states. We would like to explore whether the state of Tennessee would like to benefit from the reciprocal licensing agreement. The alternative is that all applications are built without sharing, which increases time to deploy and cost.	to the State will be added as an addendum to the pro-forma contract.
15.	**E.6.b Contractor Proprietary Products.** The license provisions of the pro forma contract state the State may use the software for the "State's own business." We would like to suggest clarifying this provision. We have absolutely no objections to the State using, modifying and improving the Contractor Proprietary Products upon expiration of the contract, (or having another contractor do so on its behalf) as needed for governmental services in Tennessee. This extends to all levels of Tennessee government- state, county, and local, and as needed for providing government services to both the citizens of Tennessee and individuals outside of Tennessee using the portal to take advantage of governmental services. We seek to clarify that such business purposes do not extend to selling or otherwise providing the code for use in other states, or for commercial purposes.	The State agrees to amend Contract Section E.6.b.i for clarification. See Item D, following these questions.
16.	**E.15 Confidentiality of Records.** [a] There is a statement that the confidentiality obligations under this section survive termination of the contract. The provisions of the contract that protect the Contractor's confidential information should also survive termination. We would like to explore putting in place confidentiality provisions that are the same for the confidential information of both parties. [b] This section also makes all material and information, regardless of form, provided to the Contractor by the State confidential information. Obviously materials will be provided by the State to the Contractor for hosting on the web and for display to the public. It has become common practice to include in confidentiality requirements exceptions for disclosures required by law, court order, and exempting information that is in the public domain through no fault of the Contractor. We would like to propose that the State consider including such exceptions.	[a] The language will remain as written. [b] The State agrees to modify pro forma contract Section E.15 as described in Item I, following these questions.
17.	**E.16 Copyrights and Patents.** This provision requires the Contractor to indemnify the State from claims against the state for infringement that arises from Contractor's	The State seeks indemnification for claims brought against the State based on activities of the contractor alleged to be inconsistent with copyright or patent rights or applicable copyright or patent law, and does not seek indemnification for wrongful acts alleged to have been

	performance of the Contract. Since the Contractor exercises no control over the content provided by the State to be posted on the website, there should be an exception to the indemnification provisions that Contractor is not responsible to indemnify the State for claims arising from the State's acts or omissions, or from property provided to the Contractor by the State.	committed by the State. The language in Contract Section E.16 remains as written.
18.	**CONTRACT ATTACHMENT A** Attachment A provides specific requirements to supplement the Section A, Scope of Services in the pro forma contract. Per Section A of the pro forma contract, the Contractor "agrees to deliver a State Service Portal in accordance with requirements stated in the following Contract Attachments", including Attachment A, Technical Requirements. [Vendor Name Deleted] understands and can deliver on all technical requirements in Attachment A. However, [Vendor Name Deleted] believes it has proven to the State under the current contract terms, that it can deliver significant value, and excellent portal services; hence it would like the opportunity to discuss the changes contemplated in Attachment A. For example, in several instances, the technical requirements as written entail significant changes in our current process. Accepting and abiding by the specific requirement may have an impact on available resources in other areas of portal services. For example, Section A.20, Performance Monitoring of Attachment A requires that we diagnose and correct system malfunctions within two hours of occurrence. The state may prefer to have [Vendor Name Deleted] resources concentrate on other high-priority projects within the two-hour framework instead of working on a relatively minor system malfunction that is not impacting the overall system. If we accept the performance monitoring requirement, we may have to reassign an existing technical resource currently dedicated to other technical areas to full-time performance monitoring and resolution, when the specifics of the situation suggest it might be more advantageous for the portal to do otherwise. As a result, this may have an overall impact on our ability to deliver new portal services. Another example is Section A.41.1, Telephone Support, of Attachment A, which states that voicemail as an initial response for telephone support is unacceptable. Again, [Vendor Name Deleted] can easily meet this requirement from a technical standpoint. However, providing this	Although no question was asked the State will address this issue. Placing critical requirements such as these in an "annual business plan" is not acceptable. Such a plan is outside the contractual requirements and hence has limited value to the State or the Contractor. Two specific areas were cited and our responses to these follow: A.20 Performance Monitoring and Problem Resolution – Hardware and Software This item deals specifically with portal production and it is entirely reasonable that the Contractor providing this service take the steps outlined in this section and have problem resolution underway within two hours. We are amending the RFP to address the two hour requirement in this section to clarify that problem resolution must be underway, acknowledging that some problems require more than two hours to repair. See Item F following these questions. A.41.1 Telephone Support This has been a problem area under the current portal contract. OIR has received numerous complaints from various state agencies concerning their inability to have their telephone calls answered by a person. It is reasonable to expect that a service that is available anytime and anyplace is backed by telephone support.

	level of service may require additional expense from our portal resources that will not be applied to other portal services. Thus, complying with this provision may have a consequence on expected service delivery in other areas. We suggest that one option to finalizing the requirements of Attachment A would be to defer these standards and place them instead in the annual business plan. We believe that the annual business plan process, as described in Section A.9 of Attachment A, may provide the appropriate forum to set the technical requirements with the State, and weigh the impact on available portal resources. As part of the business plan process, the portal staff would present the overall impact of each new requirement and the potential result on other portal services. The State could then evaluate the full impact of the requirement before making it a priority for the portal, and requiring portal resources to be directed to it. The current contract structure, does not allow this type of discussion or analysis, and lacks this flexibility.	
19.	**CONTRACT ATTACHMENT C** As noted above, the State has elected to use a self-funded model to build and improve its portal. In such a model, the Contractor is required to fund upfront portal capital costs and improvements, and receive payment over a period of time from the steam [sic] of transaction fees received. While we are willing to sign a contract with liquidated damages, we would like the opportunity to discuss in more detail how this provision is counter to the goals of this contract. Also, since a number of the service level requirements are tied to State performance as well, (such as the availability of data from the applicable State agency), the service levels should be adjusted to account for failures to meet service levels that the State caused, or to which the State contributed.	The liquidated damages language will remain as written.

C. Delete paragraph A.8 of RFP Attachment 6.1, pro forma contract, in its entirety and insert the following in its place:

A.8. The Contractor shall maintain copies of the Portal Services Work Products and Contractor Proprietary Products source code in escrow with an escrow company pre-approved by the State. The Contractor shall pay all fees associated with placing and maintaining the source code in escrow.

D. Delete paragraph E.6.b.i of RFP Attachment 6.1, pro forma contract, in its entirety and insert the following in its place:

E.6.b.i The Contractor hereby grants the State a perpetual, royalty-free, irrevocable, unlimited, and nonexclusive right to use the Contractor's Propriety Products for the State's business purposes, including but not limited to, use for State's business purposes by any future service providers with whom the State may contract. The Contractor warrants that Contractor is duly authorized to grant this right. The State agrees not to sell or license Contractor Proprietary Products to other States or third parties for commercial purposes. "Commercial purposes" do not include the use of Contractor Proprietary Products in the course of State business for which a fee or charge is paid by a user of such services (such as a person using the State's Portal services to search State records or renew a license).

E. Delete paragraph E.4.b of RFP Attachment 6.1, pro forma contract, in its entirety and insert the following in its place:

E.4.b. State Breach— In the event of a Breach of contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of contract by the State. If the Breach is such that a reasonable contractor would not have been aware of its occurrence, the Contractor shall notify the State in writing within 30 days of the time at which the Contractor should have been aware of the breach. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

F. Delete the first paragraph of Contract Attachment A, Section A.20 in its entirety and insert the following in its place:

Proposers must describe their plans for performance monitoring and problem resolution within Portal production. The Proposer must describe how it will respond to system malfunctions, and diagnose and commence resolution of problems within 2 hours of the occurrence. The following items must be addressed:

G. Add the following as RFP Attachment 6.1, pro forma contract, Section E.4.a.(5) and renumber any subsequent sections as necessary:

E.4.a.(5) The State reserves the right to invoke the provisions of Contract Sections E.4.a.(3) or E.5 with regard to any fee listed in Contract Section C.3. However, such decision and the associated discontinuation (if any) of a Contractor revenue stream shall only affect the transaction fee(s) and potentially recoverable costs specific to the Partial Default or Partial Takeover event in question, and shall not affect other fees and potentially recoverable costs.

H. Add the following as RFP Attachment 6.1, pro forma contract, Section E.4.a.(6) and renumber any subsequent sections as necessary:

E.4.a.(6) The contractor may request the opportunity to cure a breach of contract due to a problem in contract performance. Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time it will take to resolve the problem. The State's approval shall not be unreasonably withheld. This opportunity to "cure" shall not apply to circumstances in which the contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations.

I. Add the following as next-to-last paragraph in RFP Attachment 6.1, pro forma contract, Section E.15 and renumber any subsequent sections as necessary:

Notwithstanding the provisions of this section E.15, the Contractor shall not be deemed to be in breach for disclosures required by law, court order, or information intentionally released by the State to the public.